

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2001 Iowa Acts, chapter 192, section 4(6), the Department of Human Services proposes to amend Chapter 54, “Facility Participation,” Iowa Administrative Code.

These amendments provide clarification of the treatment of related-party compensation in the setting of rates for residential care facilities (RCFs). The amendments also clarify the Department’s treatment of legal, accounting, consulting, and other professional fees, including association dues, and penalties and fines. These amendments change which cost report is to be submitted, what is required to be submitted to the Department with the cost report, and how the cost report is to be submitted. The amendments also more clearly define the timing for submitting an amended cost report and clarify the Department’s position on the penalty period for late submission of cost reports. The amendments also change language to reflect current operations of the Iowa Medicaid Enterprise.

Any interested person may make written comments on the proposed amendments on or before July 2, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend rule 441—54.1(249) as follows:

441—54.1(249) Application and contract agreement. Each facility desiring to participate in the state supplementary assistance program must enter into a contract with the department of human services and agree to the provisions as enumerated in Form ~~PA-1108-6~~ 470-0443, Application and Contract Agreement for Residential Care Facilities. The effective date of the contract shall be the first of the month that the Application and Contract Agreement for Residential Care Facilities, signed by the administrator of the facility, is received by the department. No payment shall be made for care provided before the effective date of the contract. The contract shall be in effect until the department ceases to participate in the program, until either party gives 60 days’ notice of termination in writing to the other party, or until there is a change in ownership. The facility shall notify the department within 30 days of a change in ownership, a change in the number of beds or a change in administrator.

This rule is intended to implement Iowa Code section 249.12.

ITEM 2. Amend rule 441—54.2(249) as follows:

441—54.2(249) Maintenance of case records. A facility must maintain a case folder for each individual residing in the facility which contains the following:

1. Contract between the facility and the resident on Form ~~PA-2365-6~~ 470-0477, RCF Admission Agreement.
2. Physician’s statement certifying that the resident does not require nursing services.

3. Proof of expenditures from resident's "personal needs" allowance.
This rule is intended to implement Iowa Code section 249.12.

ITEM 3. Amend rule 441—54.3(249), introductory paragraph, as follows:

441—54.3(249) Financial and statistical report. All facilities wishing to participate in the program shall submit a Financial and Statistical Report, Form ~~AA-4036-0~~ 470-0030, to the department. The reports shall be based on the following rules.

ITEM 4. Amend subrule 54.3(3) as follows:

54.3(3) Submission of reports. The report shall be ~~submitted to~~ received by the ~~department of human services~~ Iowa Medicaid enterprise provider cost audit and rate-setting unit no later than three months after the close of the facility's established fiscal year. If the residential care facility is associated with a nursing facility, the cost report shall be due no later than five months after the close of the provider's reporting year.

a. The financial and statistical report shall be submitted in an electronic format approved by the department.

b. The submission shall include a working trial balance that corresponds to all financial data contained on the cost report. The working trial balance must provide sufficient detail to enable the Iowa Medicaid enterprise provider cost audit and rate-setting unit to reconcile accounts reported on the general ledger to those on the financial and statistical report. For reporting costs that are not directly assigned to the residential care facility in the working trial balance, an allocation method must be identified for each line, including the statistics used in the calculation. Reports submitted without a working trial balance shall be considered incomplete, and the facility shall be subject to the rate reductions set forth in paragraph 54.3(3) "d."

c. If the financial statements have been compiled, reviewed or audited by an outside firm, a copy of the compilation, review or audit, including notes, for the reporting period shall be included with the submission of the financial and statistical report.

d. Failure to timely submit the complete report within the three-month period shall reduce payment to 75 percent of the current rate.

(1) The reduced rate shall be effective the first day of the fourth month following the facility's fiscal year end and shall remain in effect until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate-setting unit.

(2) The reduced rate shall be paid for no longer than three months, after which time no further payments shall be made until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate-setting unit.

e. Amended reports. The department, in its sole discretion, may reopen a review of a financial and statistical report at any time. No other entity or person has the right to request that the department or its contractor reopen a review of a financial and statistical report, or submit an amended financial and statistical report for review by the department, after the facility is notified of its per diem payment rate following a review of a financial and statistical report.

f. When a residential care facility continues to include in the total costs an item or items which had in a prior period been removed through an adjustment made by the department or its contractor, the contractor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the entire quarter beginning the first day of the fourth month after the facility's fiscal year end. If the adjustment has been contested and is still in the appeals process, the facility may include the cost, but must include sufficient detail so the Iowa Medicaid enterprise provider cost audit and rate-setting unit can determine if a similar adjustment is needed in the current period. The department may, after considering the seriousness of the offense, make the reduction.

g. Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the Iowa Medicaid enterprise when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

ITEM 5. Amend subparagraph **54.3(11)“h”(1)** as follows:

(1) Compensation means the total benefit received by the owner or immediate relative for the services rendered to the facility. ~~It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor; the cost of assets and services which the proprietor receives from the facility; and deferred compensation.~~ Compensation includes all remuneration, paid currently or accrued, for managerial, administrative, professional and other services rendered during the period. Compensation shall include all items that should be reflected on IRS Form W-2, Wage and Tax Statement, including, but not limited to, salaries, wages, and fringe benefits; the cost of assets and services received; and deferred compensation. Fringe benefits shall include, but are not limited to, costs of leave, employee insurance, pensions and unemployment plans. If the facility's fiscal year end does not correlate to the period of the W-2, a reconciliation between the latest issued W-2 and current compensation shall be required to be disclosed to the Iowa Medicaid enterprise provider cost audit and rate-setting unit. Employer portions of payroll taxes associated with amounts of compensation that exceed the maximum allowed compensation shall be considered unallowable for reimbursement. All compensation paid to related parties, including payroll taxes, shall be required to be reported to the Iowa Medicaid enterprise provider cost audit and rate-setting unit with the submission of the financial and statistical report. If it is determined that there have been undisclosed related-party salaries, the cost report shall be determined to have been submitted incomplete and the facility shall be subject to the penalties set forth in paragraph 54.3(3) “d.”

ITEM 6. Adopt the following **new** subparagraph **54.3(11)“h”(5)**:

(5) The maximum allowed compensation for employees as set forth in subparagraph 54.3(11) “h”(4) shall be adjusted by the percentage of the average work week that the employee devoted to business activity at the residential care facility for the fiscal year of the financial and statistical report. The time devoted to the business shall be disclosed on the financial and statistical report and shall correspond to any amounts reported to the Medicare fiscal intermediary. If an owner's or immediate relative's time is allocated to the facility from another entity (e.g., home office), the compensation limit shall be adjusted by the percentage of total costs of the entity allocated to the facility. In no case shall the amount of salary for one employee allocated to multiple facilities be more than the maximum allowed compensation for that employee had the salary been allocated to only one facility.

ITEM 7. Rescind paragraph **54.3(11)“n”** and adopt the following **new** paragraph in lieu thereof:

n. Reasonable legal, accounting, consulting and other professional fees, including association dues, are allowable costs if the fees are related to patient care. Legal, accounting, consulting and other professional fees, including association dues, described by the following are not considered to be patient-related and therefore are not allowable expenses:

- (1) Any fees or portion of fees used or designated for lobbying.
- (2) Nonrefundable and unused retainers.
- (3) Fees paid by the facility for the benefit of employees.
- (4) Legal fees, expenses related to expert witnesses, accounting fees and other consulting fees incurred in an administrative or judicial proceeding. EXCEPTION: Facilities may report the reasonable costs incurred in an administrative or judicial proceeding if all of the following conditions are met. Recognition of any costs will be in the fiscal period when a final determination in the administrative or judicial proceeding is made.
 1. The costs have actually been incurred and paid,
 2. The costs are reasonable expenditures for the services obtained,
 3. The facility has made a good-faith effort to settle the disputed issue before the completion of the administrative or judicial proceeding, and
 4. The facility prevails on the disputed issue.

ITEM 8. Adopt the following **new** paragraphs **54.3(11)“o”** and **“p”**:

- o.* Penalties or fines imposed by federal or state agencies are not allowable expenses.
- p.* Penalties, fines or fees imposed for insufficient funds or delinquent payments are not allowable expenses.

ITEM 9. Amend subrule 54.8(1) as follows:

54.8(1) *Audit of financial and statistical report.* Authorized representatives of the department of human services or the Department of Health and Human Services shall have the right, upon proper identification, to audit, using generally accepted auditing procedures, the general financial records of a facility to determine if expenses reported on the Financial and Statistical Report, Form ~~AA-4036-0~~ 470-0030, are reasonable and proper according to the ~~rules~~ conditions set forth in rule ~~441—~~54.3(249). These audits may be done either on the basis of an on-site visit to the facility, ~~their~~ to the facility's central accounting office, or ~~office(s) to an office of their agent(s)~~ the facility's agent.

a. When a proper per diem rate cannot be determined, through generally accepted and customary auditing procedures, the auditor shall examine and adjust the report to arrive at what appears to be an acceptable rate and shall recommend to the department of human services that the indicated per diem be reduced to 75 percent of the established payment rate for the ensuing six-month period and if the situation is not remedied on the subsequent Financial and Statistical Report, Form ~~AA-4036-0~~ 470-0030, the health facility shall be suspended and eventually canceled from the residential care facility program, or

b. No change.